IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

Crl.MC.No. 2792 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.127/1999

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PETITIONER: REVISION PETITIONER:

SOMAN, S/O. RAGHAVAN,
NOOREKKATIL, MUTHAPPANPUZHA,THIRUVAMBADI VILLAGE,
KOZHIKODE DISTRICT.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM)

RESPONDENTS: STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. KAMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2792 of 2007

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Dated this the 6th day of September, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 27 of the Kerala Forest Act. As per order dt. 12.7.2007 in Crl.R.P.No.127 of 1999 this court issued certain directions in favour of the petitioner. I extract below the relevant direction, which appears in paragraph 3 of that order:

> "3. This court is of the view that since the occurrence pertains to the year 1994 the petitioner has already suffered the agony of a protracted trial spanned over a period of 12 years. In totality of the facts and circumstances of the case I am of the view that interests of justice will be met if while maintaining the order of conviction the petitioner is rather asked to pay a fine of Rs.2000/- within a period of one month from today instead of undergoing the sentence. Ordered accordingly. <u>If however, the fine amount is not paid within the time mentioned above, the petitioner would undergo the sentence as imposed by the courts below.</u>"
>
> (emphasis supplied)

2. The petitioner did not pay the fine amount within the said period of one month. Consequently, warrant of arrest was issued against him for execution of the sentence. It is submitted at the Bar that the petitioner was arrested on 24.8.2007 and he is now undergoing the sentence imposed by the courts below.

3. The petitioner has now come to this court raising a grievance that the direction of this Court has not been followed by the learned Magistrate in its essence and substance. The learned counsel for the petitioner submits that what the learned Judge intended obviously was that if the fine amount is not paid within the period of one month, the petitioner shall undergo the sentence imposed by the courts below as default sentence. The counsel contends that it cannot be assumed that the learned Judge, who disposed of the revision (the then Chief Justice) did not want to grant to the petitioner the advantage of avoiding the substantive sentence if he were willing to pay the fine amount. Therefore, the counsel wants this court to construe the direction extracted above as imposing a sentence of fine and a default sentence equivalent to the substantive sentence already imposed. In the alternative the learned counsel for the petitioner submits that in the peculiar facts and circumstances of this case, the petitioner may be given reasonable further time to pay the fine amount and avoid the sentence. The petitioner is willing to pay the fine amount straight away. The petitioner could not pay the amount earlier as he was laid up. On 24.8.2007 he was prepared to pay the amount but the same was not received by the learned Magistrate, it is submitted. The counsel submits that in fact the petitioner was laid up and was carried physically to the learned Magistrate.

4. I have considered all the relevant inputs. Considering the language of the operative portion of the order, the argument that the substantive sentence earlier was to be reckoned as a default sentence after the impugned direction cannot be accepted. The language of paragraph 3 extracted above does not permit me to do the same.

5. I accept the submission of the learned counsel for the petitioner that the petitioner was laid up and it was in these circumstances that he could not deposit the fine amount as directed in the order extracted above. I am satisfied that the petitioner can be granted some further time to deposit the fine amount. He is directed to pay the fine amount within a period of ten days.

6. This Crl.M.C. is accordingly allowed in part. If the petitioner deposits the fine amount of Rs.2000/- as directed in the impugned order on or before 17.9.07, the learned Magistrate shall reckon the same as sufficient compliance with the order extracted above. If such payment is made, the petitioner, if in custody, shall be released forthwith.

7. Hand over the order.

(R. BASANT)
Judge

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